DATE: June 28, 1993
CASE NO. 90-ERA-4

IN THE MATTER OF

LILLARD W. BLEVINS,

COMPLAINANT,

v.

TENNESSEE VALLEY AUTHORITY,

RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

FINAL ORDER OF DISMISSAL

This case arises under the employee protection provision of the Energy Reorganization Act of 1974, as amended (ERA), 42 U.S.C. § 5851 (1988), and is before me pursuant to the [Recommended] Order of Dismissal issued by the Administrative Law Judge (ALJ) on January 31, 1990. The ALJ's order dismisses the case without prejudice on the basis of Complainant's written request of January 22, 1990. Under the regulations which implement the ERA, the ALJ's order [1] is now before me for review. 29 C.F.R. § 24.6 (1991).

Section 5851(b)(2)(A) of the ERA provides that "the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by subparagraph (B) or denying the complaint."

In this case, the ALJ cites no authority for his recommended dismissal but notes that he is acting pursuant to Complainant Blevins's letter of January 22, 1990, indicating his desire to withdraw his November 1, 1989 appeal. [2] Complainant's effort to voluntarily withdraw his complaint was done with the express

approval of the Respondent, *see* Respondent's letter of January 24, 1990, from its Assistant General Counsel to the ALJ. Both the regulations implementing the ERA and the Rules of Practice and Procedure for Administrative Law Judges, 29 C.F.R.

Part 18 (1991), are silent with regard to voluntary dismissals of this nature. However, it is well established that voluntary dismissals of ERA complaints are covered by Rule 41 of the Federal Rules of Civil Procedure. [3] *Mark E. Kleinman v. Florida Power and Light Company*, Case No. 91-ERA-00050; Sec. Final Order of Dismissal, Feb. 21, 1992, slip op. at 2.

Respondent's written response indicating that it does not object to Complainant's voluntary dismissal, together with Complainant's notice of voluntary dismissal, may be deemed sufficient to constitute a stipulation of dismissal by the parties satisfying the requirements of Rule 41(a)(1)(ii). *Id.* (and cases cited therein).

Accordingly, pursuant to Rule 41(a)(1)(ii), the complaint in this case is DISMISSED WITHOUT PREJUDICE.

SO ORDERED.

ROBERT B. REICH
Secretary of Labor

Washington, D.C.

[ENDNOTES]

[1] The ALJ's order is not entitled "Recommended Decision." However, under the ERA's implementing regulations, 29 C.F.R. Part 24 (1991), except in limited circumstances, *see* 29 C.F.R. § 24.5(e)(4), an ALJ's decision is a recommended decision and final orders must be issued by the Secretary. 29 C.F.R. § 24.6.

[2] By telegram on this date, Complainant appealed the adverse determination on his complaint issued by the District Director (Nashville) of the Wage and Hour Division, Employment Standards Administration on October 27, 1989. It appears from the record that Complainant filed two other ERA complaints against Respondent, in August of 1985 and June of 1989. However, the case before me involves only the complaint of October 17, 1989.

[3] Rule 41(a)(1)(ii) provides for dismissal of an action "by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice . . . ."